Court had denied rehearing or issued a mandate, and not being informed or otherwise aware that Mr. Elledge had been returned to Broward County and thus was available for consultation.[2]

Counsel did not learn that Mr. Elledge was in the county jail until July 28, 1977 when he received a call from Mr. Elledge who wanted to know why counsel had not come to see him. In their first meeting counsel and Mr. Elledge discussed the case briefly and counsel then prepared a motion for continuance which he filed on July 29, 1977. Defense counsel thought the motion would be granted because he could not see any reason it should not be --there was no speedy trial problem, there was no question of bail, there were no other pending charges, and most importantly because he was telling the court that he needed more time to prepare and that he needed to investigate and call witnesses. The continuance was not granted and the trial proceeded over counsel's protestations that he was not prepared. Consequently, he was forced to proceed to trial without any substantive witnesses, with only Mr. Elledge's uncorroborated testimony, and with pretrial preparation limited to going over Mr. Elledge's testimony in the prior trial.

The facts showing prejudice under these circumstances are compelling. Counsel did have specific, concrete information bearing upon sentencing that he was unable to present to the fact-finders. And, had counsel been able to investigate this information, it is now known that dramatic evidence would have been found in mitigation of punishment. None of this evidence, however, was able to be presented on Mr. Elledge's behalf. The

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[2] Counsel's involvement with the case had ended more than two years previously (he did not represent Mr. Elledge on appeal). Sometime near the middle of July, 1977, the trial judge asked counsel to represent Mr. Elledge at the resentencing trial and indicated that August 2nd was the scheduled date. Counsel agreed to do so.

Upon agreeing to represent Mr. Elledge at the new sentencing trial, counsel assumed that the August 2nd trial date was only tentative and that he could move for additional time if needed. Counsel's view of the tentativeness of the date was also reinforced by the fact that he knew that a rehearing had been filed in the Florida Supreme Court and was under the erroneous impression that the Florida Supreme Court had not issued its mandate. Counsel also was unaware that Mr. Elledge had been returned to Broward County and was available for conferences and consultation.

capital sentencing of Mr. Elledge is thus neither individualized nor reliable, as it omitted the major aspects of Mr. Elledge's character and the circumstances of the offense.

Counsel emphatically reiterated at the hearing below what he told the judge during the hearing held on his motion to continue: that he was not ready to proceed on August 2, 1977. There were a number of important facts that counsel needed to investigate and confirm. When he met with Mr. Elledge in those few short days before trial, Mr. Elledge had informed counsel that while in prison the doctors had prescribed and placed Mr. Elledge on "mind drugs" such as "Mellaril and another drug used for epilepsy. [dilantin]." Counsel testified that this was critically important because for the first time there might be concrete evidence to support his belief (and his only line of defense) that Mr. Elledge was "crazy." Counsel did not mention this evidence in his motion for continuance because he needed more time to investigate it (and because he thought the continuance would be granted). See Hintz v. Beto, 379 F.2d 937, 942 (5th Cir. 1967) Counsel also wanted to find and present witnesses concerning Mr. Elledge's "early upbringing". Counsel believed that if he would have had time to prepare, the "psychiatric evidence would bear fruit." Counsel testified emphatically that he was "not prepared" in his representation of Mr. Elledge at the penalty trial. Thus, there were specific areas that required investigation. These areas related directly to the only plausible line of defense. Counsel however could not investigate these matters sufficiently to present these matters at trial.

The hearing below established the dramatic and compelling evidence that could have been discovered and presented had counsel been able to conduct the investigation he believed essential. This evidence is of such a quality as to provide a powerful defense to the imposition of the death penalty.[3]

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[3] The evidence that could have been discovered with adequate investigation was proffered below. [The witnesses could not be present to testify because the trial judge denied the motion by Mr. Elledge to provide the funds necessary to secure their attendance at the proceedings below.]

First, Dr. Dorothy Lewis conducted a complete psychiatric evaluation of Mr. Elledge and concluded, as suspected by Mr. Elledge's trial counsel, that at the time of the offense Mr. Elledge was suffering from a severe mental disorder that caused him to act the way he did and precluded him from controlling his actions. Dr. Lewis found that for a long time before the offense, as well as at the time of the offense, Mr. Elledge was severely mentally ill as a result of central nervous system disorders as pervasive and potentially as documentable as a brain tumor. She described his illness as consisting of three severe, interactionally related disorders: an organic impairment of his brain, which was most akin to (and which may have been) psycho-motor epilepsy; episodic dyscontrol, a severe dysfunction of the electrical system of the brain precipitated by the ingestion of drugs and alcohol; and psychotic paranoia. In Dr. Lewis' opinion, all three of these disorders combined to produce uncontrollable violent outbursts resulting in the sexual assault upon and homicide of Margaret Strack. [A copy of Dr. Lewis' report is set out in Appendix D]

Second, these findings of Dr. Lewis were firmly supported by Mr. Elledge's documented biological vulnerabilities, his family history and background and his environment. The testimony of members of Mr. Elledge's family that would document the specifics of the family life and environment was proffered below in detail, more completely than ever before. [4]

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[4] Although Mr. Elledge was evaluated prior to his original trial by two psychiatrists, these evaluations focused only on the narrow issues of competency and sanity (as a guilt-innocence defense). Moreover, the evaluations were quite perfunctory and were not based on the extensive information which could have been developed --had counsel been provided adequate time -- and which was available to Dr. Lewis. With the information available to Dr. Lewis, and with Dr. Lewis' evaluation of Mr. Elledge in light of that information, counsel testified at the post-conviction hearing that he could have effectiely countered any effort by the state to use the earlier psychiatric evaluations to defeat his claim that Mr. Elledge was severely impaired at the time of the homicide.

Third, confirming trial counsel's firm belief that adequate investigation of Mr. Elledge's mental state would "bear fruit," this evidence explained -- in a mitigating way -- why Mr. Elledge committed the homicide. Mr. Elledge assaulted and killed Margaret Strack because her perceived sexual teasing --in his life long context of sexual abuse and brutalization -- triggered his latent psychotic paronia. While the psychosis caused him to attack Ms. Strack, his ingestion of drugs and alcohol, along with the stress of Ms. Strack's perceived rejection, also triggered the abnormal electrical activity in his brain which produced an outpouring of rage which he had absolutely no means of controlling. His loss of memory for the several hour period following the rage attack of Ms. Strack further confirmed the brain dysfunction underlying the homicide. Accordingly, at the time of the homicide Mr. Elledge was severally mentally ill, and his illness absolutely foreclosed any possibility of his conforming his behavior to the requirements of law.[5]

Thus, the investigation which Mr. Elledge's counsel did not undertake had extraordinarily serious consequences for Mr. Elledge. His counsel did not -- and could not -- present on his behalf evidence which thoroughly explained -- and mitigated -- a crime which appeared to be the kind of crime that ought to be punished by death. What were in truth the acts of a terribly impaired, ill man were thus seen by the jury and the judge as the acts of a terribly evil man, because defense counsel was not given the opportunity to investigate and develop facts which came to his attention on the eve of trial.

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[5] Briefly, it should be mentioned that Dr. Lewis' credentials are unassailable. Her curriculum vitae was proffered below and is available for this Court's review. In addition, as also proffered, Dr. Lewis has been selected to author the chapter concerned with delinquency, violence, and central nervous system disorders in the leading textbook of psychiatry, The Comprehensive Textbook of Psychiatry. She is undoubtedly among the current leaders, if not the leader, in the nation in this field which seeks to understand the causes of delinquent and violent behavior. She has authored two books, more than forty-eight articles and book chapters in her field, and has presented more than sixty papers at conferences and symposia all over the country.

Surely Mr. Elledge was prejudiced by this. Yet no one can say that the outcome of his sentencing trial would have been altered if counsel had been able to investigate these facts and present the kind of evidence described in the preceding paragraphs. What can be said, with certainty, is that Mr. Elledge's character and the circumstances of the offense would have been much more thoroughly considered had these facts been investigated and presented. What can also be said, with certainty, is that a capital sentencing proceeding which omits from the sentencer's consideration the kind of evidence discussed herein cannot "ensure the reliability, under the Eighth Amendment standards, of the determination that 'death is the appropriate punishment in a specific case.'" Lockett v. Ohio, 438 U.S.586, 601 (1978), quoting Woodson v. North Carolina, 428 U.S. 280, 305 (1976).

Accordingly, the Court should grant certiorari to determine the constitutionally proper measure of prejudice in the analysis of a claim that counsel provided ineffective assistance in a capital sentencing trial because, in part, the state prevented counsel from conducting the investigation which would have produced relevant, compelling evidence in mitigation.

CONCLUSION

For the reasons expressed herein, the petitioner, WILLIAM DUANE ELLEDGE, respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully Submitted,

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BY _____
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Richard H Burr
RICHARD H. BURR
Of Counsel.

APPENDIX

William Duane ELLEDGE,
Petitioner/Relator,

v.

Robert GRAHAM, Governor, State of Florida; Louie L. Wainwright, Secretary, Florida Department of Corrections,
Respondents.

William Duane ELLEDGE, Petitioner,

v.

Louie L. WAINWRIGHT, Secretary, Florida Department of Corrections,
Respondent.

William Duane ELLEDGE, Petitioner,

v.

STATE of Florida, Respondent.

William Duane ELLEDGE, Appellant,

v.

STATE of Florida, Appellee.

Nos. 63344, 63345, 63387, 63388.

Supreme Court of Florida.

April 14, 1983.

Rehearing Denied June 22, 1983.

Petitioner convicted of first-degree murder urged Supreme Court to issue its writ of habeas corpus to permit appellate review of denial by the Circuit Court, Broward County, M. Daniel Futch, Jr., J., of his motion to suppress custodial statements and, in addition, to issue writs of quo warranto and/or habeas corpus to prevent execution of death warrant. Petitioner also appealed denial of his motion to vacate judgment and sentence and, further, petitioned for leave to file late petition for writ of error coram nobis and/or for extraordinary relief with regard to capital penalty trial. The Supreme Court held that: (1) petitioner was not entitled to appellate review of trial court's denial of his motion to suppress his confessions, and (2) petitioner was not entitled to vacation of judgment and sentence.

Order accordingly.

1. Criminal Law ⇐1219

When death sentence was superimposed upon existing life sentence, petitioner had no legal right to serve life sentence before death sentence could be carried out.

2. Criminal Law ⇐1026, 1180

Petitioner was not entitled to appellate review of trial court's denial of his motion to suppress confessions, where he pleaded guilty and did not raise this issue on his previous appeals.

3. Criminal Law ⇐1026

A guilty plea cuts off any right to an appeal from court rulings that preceded the plea with the exception of a limited class of issues which occur contemporaneously with the entry of the plea, namely, the subject-matter jurisdiction, the illegality of the sentence, the failure of the government to abide by the plea agreement, and the voluntary and intelligent character of the plea.

4. Criminal Law ⇐997.3

Petitioner was not entitled to writ of error coram nobis on ground of newly discovered evidence, in that facts were either available or could have been obtained at time of sentencing.

5. Criminal Law ⇐998(7, 8)

Petitioner was not entitled to vacation of judgment and sentence, in that his confessions and guilty plea were properly admitted and allegation of ineffective assistance of counsel had not been shown. West's F.S.A. RCrP Rule 3.850.

Richard L. Jorandby, Public Defender, Craig S. Barnard, Chief Asst. Public Defender, and Richard H. Burr, III, Asst. Public Defender, Fifteenth Judicial Circuit, West Palm Beach, for petitioner/relator, in No. 63344, petitioner in No. 63345 and 63387 and appellee in No. 63388.

Jim Smith, Atty. Gen. and Joy B. Shearer, Asst. Atty. Gen., West Palm Beach, for respondents in No. 63344 and 63345 and appellee in No. 63388.

PER CURIAM.

Petitioner urges this Court to issue its writ of habeas corpus to permit appellate review of the lower court's denial of his motion to suppress custodial statements and, in addition, to issue writs of quo warranto and/or habeas corpus to prevent the execution of the death warrant. Petitioner also appeals the denial of his rule 3.850 motion to vacate judgment and sentence and, further, petitions for leave to file a petition for writ of error coram nobis and/or for extraordinary relief with regard to the capital penalty trial. We have jurisdiction. Art. V, § 3(b)(7) & (9), Fla.Const. We find no merit in petitioner's arguments, deny all petitions and affirm the denial of his motion to vacate judgment and sentence.

On March 17, 1975, in the Seventeenth Judicial Circuit in and for Broward County, petitioner William Duane Elledge moved to suppress certain custodial statements. Upon the denial of his motion, he entered pleas of guilty to first-degree murder and rape, and on March 27, 1975, was sentenced to death. On direct appeal, this Court affirmed petitioner's conviction but vacated the death sentence, ordering the trial court to conduct a new sentencing trial. *Elledge v. State*, 346 So.2d 998 (Fla.1977). Following that trial, petitioner was resentenced to death on August 3, 1977. On appeal this Court affirmed the death sentence. *Elledge v. State*, 408 So.2d 1021 (Fla.1981), *cert. denied*, — U.S. —, 103 S.Ct. 316, 74 L.Ed.2d 293 (1982). On February 15, 1983, the Governor of Florida signed a death warrant ordering petitioner's execution.

QUO WARRANTO AND/OR HABEAS CORPUS

[1] Petitioner contends that since his 1977 death sentence contained a provision that the sentence run consecutive to a sentence of life imprisonment imposed in Case No. 74-2811, in which petitioner also pleaded guilty to first-degree murder, the death sentence cannot be carried out until after the expiration of the life sentence, which carries a mandatory minimum of twenty five calendar years. We find this petition wholly without merit. When a death sentence is superimposed upon an existing life sentence, the defendant has no legal right to serve the life sentence. *Blitch v. Buchanan*, 100 Fla. 1242, 132 So. 474 (1931) and *Whitney v. State*, 132 So.2d 589 (Fla. 1961).

HABEAS CORPUS

[2, 3] Relying on *Anderson v. State*, 428 So.2d 374 (Fla.1982), petitioner also urges that he now is entitled to appellate review of the trial court's denial of his motion to suppress his confessions, even though he pleaded guilty and did not raise this issue on his previous appeals. We disagree. A guilty plea cuts off any right to an appeal from court rulings that preceded the plea with the exception of a limited class of issues which occur contemporaneously with the entry of the plea: (1) the subject matter jurisdiction, (2) the illegality of the sentence, (3) the failure of the government to abide by the plea agreement, and (4) the voluntary and intelligent character of the plea. *Robinson v. State*, 373 So.2d 898 (Fla. 1979). The petitioner's challenge falls in this latter category because it is based on the assertion that he would not have pleaded guilty had the confessions been suppressed. A proper challenge to the voluntary and intelligent character of a guilty plea is presented to the trial court by a motion to withdraw the plea. A denial of such motion would be subject to review on direct appeal. *Robinson*. So far as we are aware, the petitioner has not previously sought to withdraw his guilty plea nor did he raise the issue on the direct appeal of his death sentence. We accorded the petitioner automatic review as we do in all death cases, and affirmed his conviction and sentence of death. *Elledge II*. § 921.141(4), Fla.Stat. (1975). Petitioner since has raised the issue of the voluntariness of his guilty plea before the trial court by means of a rule 3.850 motion, which we address below. We know of no other right of review to which the petitioner is entitled.

ERROR CORAM NOBIS

Elledge's petition presents what is purported to be newly-available evidence:

1. An undated psychiatric report by Dr. Lewis, apparently prepared in late 1982 or early 1983, based on her interviews with Elledge, a telephone interview with Elledge's mother, a review of neuropsychological testing, and a review of various institutional records through the present. Dr. Lewis concludes that "Elledge's ability to control his behavior at the time of the murder was seriously impaired."
2. A series of conclusions by petitioner's counsel based on personal and telephonic interviews with various members of Elledge's family. Counsel concludes that there is "some organic vulnerability to violent behavior in petitioner's family; and ... petitioner's thinking may also stem from an inherited tendency toward disorganized thought processes."

[4] The "facts" on which Dr. Lewis and counsel rely are not new: they were either available or could have been obtained at the time of sentencing. We note that Elledge was examined by two psychiatrists prior to trial and both stated that at the time of the rape/murder he understood and could appreciate the nature and consequences of his acts. Petitioner has presented no new information—merely a psychiatrist who draws different conclusions. *Booker v. State*, 413 So.2d 736 (Fla.1982); *Hallman v. State*, 371 So.2d 482 (Fla.1979).

RULE 3.850

Elledge appeals the denial of his rule 3.850 motion. He presents five issues for our consideration:

1. Ineffective assistance of counsel.
2. The voluntariness of his guilty plea.
3. Alleged error by the trial court in striking grounds for relief.
4. Denial of equal protection and a fair hearing by denial of funds for expert and lay witnesses.
5. The unconstitutionality of Florida's death penalty as applied.

[5] Our review of the record convinces us that the appellant's confessions and guilty plea were properly admitted and that the allegation of ineffective assistance of counsel has not been shown. *Knight v. State*, 394 So.2d 997 (Fla.1981); *Williams v. State*, 316 So.2d 267 (Fla.1975). We have fully reviewed the remaining issues raised by the appellant and find them to be without merit.

The petitions for quo warranto, habeas corpus, and leave to file a writ of error coram nobis are denied. The denial of the appellant's 3.850 motion is affirmed.

It is so ordered.

ALDERMAN, C.J. and ADKINS, BOYD, OVERTON, McDONALD, EHRLICH and SHAW, JJ., concur.

Supreme Court of Florida

WEDNESDAY, JUNE 22, 1983

WILLIAM DUANE ELLEDGE, Petitioner/Relator, v. ROBERT GRAHAM, Governor, State of Florida; LOUIE L. WAINWRIGHT, Secretary, Florida Department of Corrections, Respondents.	CASE NO. 63,344
WILLIAM DUANE ELLEDGE, Petitioner, v. LOUIE L. WAINWRIGHT, Secretary Florida Department of Corrections, Respondent.	CASE NO. 63,345
WILLIAM DUANE ELLEDGE, Petitioner, v. STATE OF FLORIDA, Respondent.	CASE NO. 63,387
WILLIAM DUANE ELLEDGE, Appellant, v. STATE OF FLORIDA, Appellee.	CASE NO. 63,388 Circuit Court No. 75-0087CF (Broward)

Upon consideration of the Motion for Rehearing filed in the above causes by attorney for Petitioner/Appellant, and response thereto,

IT IS ORDERED that said Motion be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

By: Tanya Carole
Deputy Clerk

TC
cc: Hon. Robert E. Lockwood, Clerk
Hon. M. Daniel Futch, Jr., Judg

Craig S. Barnard, Esquire
Richard H. Burr, III, Esquire
Robert L. Bogen, Esquire
Joy B. Shearer, Esquire
Sharon Lee Stedman, Esquire

CHAPTER 921

SENTENCE

921.141 Sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.—

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence, and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the constitutions of the United States or of the State of Florida. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

(2) ADVISORY SENTENCE BY THE JURY.—After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist as enumerated in subsection (6), which outweigh the aggravating circumstances found to exist; and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

(a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and

(b) That there are insufficient mitigating circumstances, as enumerated in subsection (6), to outweigh the aggravating circumstances.

In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) and upon the records of the trial and the sentencing proceedings. If the court does not make the findings requiring the death sentence, the court shall impose

sentence of life imprisonment in accordance with s. 775.082.

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida within 60 days after certification by the sentencing court of the entire record, unless the time is extended for an additional period not to exceed 30 days by the Supreme Court for good cause shown. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

(a) The capital felony was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any robbery, rape, arson, burglary, kidnapping, or aircraft piracy or the unlawful throwing, placing, or discharging of a destructive device or bomb.

(e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(f) The capital felony was committed for pecuniary gain.

(g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(h) The capital felony was especially heinous, atrocious, or cruel.

(6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The victim was a participant in the defendant's conduct or consented to the act.

(d) The defendant was an accomplice in the capital felony committed by another person and his participation was relatively minor.

(e) The defendant acted under extreme duress or under the substantial domination of another person.

(f) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(g) The age of the defendant at the time of the crime.

History.—s. 217a, ch. 19554, 1939; CGL 1940 Supp. 8663(248); s. 118, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174.

Note.—Former s. 919.23.

Psychiatric Report on William Elledge

The following psychiatric report is based on three psychiatric interviews with Mr. Elledge lasting approximately 2 -3 hours each, a telephone interview, with his mother, a review of neuropsychological testing performed by Elizabeth McMahon, Ph.D., and a review of the following materials:

1. Transcript of Mr. Elledge's statement before the Florida Parole and Probation Commission, 9/10/82.
2. California Department of Youth Authority Records (3/20/67 - 6/11/70)
3. Colorado State Hospital records (30 day criminal observation commitment) (1-11-73)
4. Medical record, Florida State Prison (4-16-75 to present)
5. Prisoner's file (excerpts), Florida State Prison (4-16-75 to present)

William Elledge is a 32 year old white man who has been awaiting execution at the Florida State Prison for the past eight years for the murder of a woman in 1974. The following evaluation and report were prepared at the request of Mr. Elledge's legal defense attorney because of the episodic nature of Mr. Elledge's violent acts and his altered states of consciousness subsequent to these acts.

Medical History

Mr. Elledge's behavior throughout childhood, adolescence, and young adulthood cannot be understood without an appreciation of his extraordinarily adverse medical and sexual histories.

Mr. Elledge was the product of a pregnancy complicated by uterine bleeding, a condition frequently associated with central nervous system damage to the infant. At birth he was a sickly fussy infant who was difficult to soothe.

Apparently, on one occasion, his mother was so drained and angered by the infant, that she attempted to throw him out a car window, but was stopped by her husband. This episode was but the earliest instance recorded in a long series of batterings experienced at the hands of his mother. Mrs. Elledge herself, an extremely guarded woman, admitted that at times she knew she had "gone too far" in her physical chastisement of William. Mr. Elledge recalls episodes when his mother pushed him to the floor, sat on top of him, and banged his head on the floor. On one occasion, she also threatened him with a rifle and was restrained by Mr. Elledge's father. Given the history of severe battering by his mother from infancy onward, it would be impossible to determine whether the organically influenced aspects of William's symptoms and behaviors evident throughout his lifetime were primarily the result of inutero central nervous system damage or of the numerous head injuries inflicted by his mother.

In addition to perinatal complications and batterings, Mr. Elledge experienced numerous head injuries throughout childhood and young adulthood. His mother reports an episode in which he "bashed his head against a concrete wall in the cellar" at age 5 years. Mr. Elledge still has a swelling on his forehead, attesting to the severity of the blow. In addition to the accident at age 5, he sustained a blow to his head at about age 9 when he was hit over the head with a croquet mallet by his brother. At around this time, his nose was first broken in an accident, the nature of which is unclear. His nose was subsequently broken in his early teens when he was hit in the face with a 2 x 4 board. The severe injuries to his nose (attested to by its present deformity) are important because severe injury to the nose is often transmitted to the temporal lobes of the brain, which are situated behind the nasal cavity. Damage to this area of the brain is often associated with episodic

rage. During young adulthood, Mr. Elledge also sustained two severe head injuries prior to the murder in question, one when he was hit in the right frontal area with a rifle butt, the other when his motorcycle hit a car and he slammed into the side of the car. In short, Mr. Elledge sustained numerous traumata to his head, any one of which could have contributed to his episodic rage reactions.

Sexual History

The sexual nature of Mr. Elledge's aggressive act can only be understood in the context of his having been sexually as well as physically abused. At an early age (approximately 9 years), two episodes of sexual abuse occurred. Mr. Elledge was accosted by a man in a truck from whom he hitched a ride. Instead of taking him to his destination, the man drove him to a wooded area, then attacked him, choking him, throwing him to the ground, and forcing anal intercourse. According to Mr. Elledge, he lost consciousness and later awakened in the woods, injured and frightened. He was afraid to tell his parents of the event because they had forbidden him to hitchhike and they would beat him, while he was naked, for infractions of their rules.

At about that time, Mr. Elledge's older sister forced him to stimulate her sexually, threatening to get him in trouble with his mother if he refused. This sexual relationship with his sister continued throughout childhood and his first experience of intercourse was with his sister.

At about age 13 or 14, Mr. Elledge and his sister were discovered having sexual relations by a female neighbor, a woman in her 30's. This woman then brought Mr. Elledge to her apartment and, under threat of revealing to his parents his sexual relationship with his sister, she forced him to perform oral sexual acts on her. Her demands on him continued over the subsequent year or two and, with the promise of teaching him how to please any woman, she encouraged him to have intercourse with her.

Of special note, the only violent juvenile act of which Mr. Elledge was accused, the battery of a 9 year old girl, occurred when he left this woman's house after having been given liquor and sexually stimulated by her. Thus, there would seem to be a fairly clear etiological relationship, at least in this instance, between sexual abuse and aggression.

During childhood Mr. Elledge was also sexually abused by a 20 year old male cousin. He was frequently beaten while naked by his mother and father and he also witnessed his father beat his sister on her bare buttocks.

Family History

Little is known about Mr. Elledge's family because of their reluctance to become involved in his case. They have never visited him since his incarceration in 1974. According to records and to Mr. Elledge's report, both of his parents were alcoholic and violent. He witnessed numerous physical fights between them and saw his mother smashed to the floor by his father. Although Mr. Elledge idealizes his father, calling him a very gentle, kind man, he recalls an instance when his father assaulted a neighbor, many episodes when he and his sister were beaten by his father, and verbal battles between his parents when his mother accused his father of "screwing with your daughter." The likelihood that this act did indeed occur is supported by the fact that Mr. Elledge's sister initiated him into sexual activity and attempted to have intercourse with him when he was only 9 or 10 years old.

The exact nature of Mrs. Elledge's psychopathology could not be determined because of her reluctance to meet with me. Her periodic fierce

rages in which on occasion she had to be restrained from killing her son, coupled with times of great lethargy, withdrawal, alcoholism, and inability to function as a mother suggest that she probably suffered from a serious mood disorder. At times her behaviors were so inappropriate (as when she played half-nude on the bed with her children and teased them by placing a hot dog in her panties) cause one to wonder whether she was indeed psychotic at times and also whether she was of normal intelligence. Another indication of possible maternal psychosis was her reaction when she received letters from Mr. Elledge's attorney's office, requesting a meeting with her. When I spoke to her on the phone, she told me that she thought she was being tricked by an escaped convict from Florida and she called the F.B.I. to check out the validity of the letters she had received from the Legal Defense Offices. On the phone with me she was so guarded that she would supply little information about the family. She did report her bleeding during the pregnancy with William and admitted that sometimes she "went too far" when she beat her son.

Psychiatric History

Mr. Elledge's severe psychiatric problems date from early childhood. As early as age 5 or 6 years, he was unable to function appropriately in the classroom, got into frequent fights with schoolmates, and felt suspicious of teachers. These kinds of behaviors are often characteristic of children with brain dysfunction and of prepsychotic children. Because of his extreme difficulty functioning in a classroom, Mr. Elledge was often seated in the front of the classroom near the teacher. This increased his discomfort because he was constantly convinced that other children were snickering at him behind his back and he would frequently reel around and retaliate

for imagined insults.

As he became older, this paranoid attitude, accompanied by frequent misperceptions and misinterpretations of the words and actions of others, caused him to stike out defensively even when not under attack.

Mr. Elledge's extraordinarily bizarre work history (he made over 45 moves in a period of about 7 years) is a reflection of his paranoid discomfort at each job he took, from dishwasher to manager of a diner. At each job he felt persecuted and misunderstood by his bosses and sometimes left after a short time without even being paid. (See xerox of his travels). As early as age 14, Mr. Elledge felt the need always to be armed to defend himself.

Some of Mr. Elledge's moves were precipiated by even more bizarre motives than paranoia. For example, when Mr. Elledge was in Canada he read a newspaper story about a woman who had been doused with gasoline and set on fire by a gang in Boston. He was enraged because the story said that none of the people who heard the woman's screams had helped her. In response to this story, Mr. Elledge conceived of a plan to obtain a gun in New York, go to Boston, and walk around the neighborhood where the murder took place. He believed that he would then be attacked by the same gang and would shoot them. This idea became so forceful that Mr. Elledge went as far as to obtain a sawed off shotgun in New York City, then travel to Boston with the intention of finding the aforementioned neighborhood. Once he got to Boston, however, Mr. Elledge realized that he was possibly psychiatrically ill and, instead of going through with his plan, sought psychiatric treatment at a Boston hospital. He said he felt he needed hospitalization, but it was refused and he was put on a waiting list for outpatient treatment.

Another psychotic episode occurred shortly prior to the murder in question. ? After having been insulted (?beaten up) by some men in Oklahoma, Mr. Elledge obtained 4 or 5 guns, secreted them around his house, and believed that he would be able to lure the men to this house and ambush them. At this time, Mr. Elledge's wife, Diane, told him that he was sick and pleaded with him to get help. When he persisted in his bizarre plot, she left him.

Prior to the murder and subsequent incarceration, Mr. Elledge also suffered from periods of extreme depression. In fact, as early as age 17, Mr. Elledge made a serious suicide attempt, taking a lethal dose of barbiturates. He was hospitalized and unconscious for from 1-2 weeks. At a later date he attempted to kill himself by turning on the gas in his stove and breathing it in, but then changed his mind and turned it off. It is likely that Mr. Elledge's extensive and extended alcohol and drug history developed as an unsuccessful attempt to treat his own depression. In Mr. Elledge's case, alcohol and drugs increase his paranoia and also seem to trigger violent episodes over which his control is severely impaired. Unfortunately, his apparent lucidity between episodes has caused him to be dismissed by psychiatrists and psychologists as psychiatrically well and to be denied proper diagnostic and therapeutic intervention.

Over the years, Mr. Elledge has experienced episodes, violent and nonviolent, for which his memory is clouded or totally absent. A most dramatic example of this phenomenon occurred in the early 1970's when Mr. Elledge found himself in Seattle. When he came to his senses, he was totally unaware of how he got to Seattle, although a reconstruction of events during the prior two weeks determined that he had driven there himself. On another occasion, he found himself all the way across town in a particular city with no idea how he got there. At another time, he found himself hitchhiking on

a highway and did not know how he got there. The earliest episode of this kind that he recalls happened when, as a teenager, he was told by his mother that he had siphoned gas from one car to another, an act of which he still has no memory.

The Murder

The question arises in what ways the psychopathology documented above is relevant to the murder for which Mr. Elledge is sentenced to death. The event, as far as it can be reconstructed, would seem to be influenced in great measure by Mr. Elledge's longstanding paranoia (exacerbated by alcohol) as well as his episodic uncontrollable rages (also precipiated by alcohol). According to Mr. Elledge, the victim herself was sexually inviting. In fact, he says that she initiated intercouse by coming out of the bathroom with her panties at her knees and coming over to him. It would seem, however, that when he responded eagerly, she in some way held him off. It is not at all clear that she did more than gently push him back or attempt to slow him down. Clearly she was interested in having sexual relations. However, her reluctance to proceed quickly triggered in Mr. Elledge a feeling of being totally rejected and tricked. His report of feeling teased and angered is very similar to his report of feelings engendered when his mother, sister, and neighbor sexually manipulated him. Similarly, after the sexual act, when the victim threatened to report him to the police, her words were as threatening and frustrating as when his sister and his neighbor threatened to tell his parents about his behavior if he failed to comply with their wishes.

The violence with which Mr. Elledge responded to this threat would

seem to be a consequence of his repeated central nervous system injury coupled with his peculiar vulnerability to the effects of alcohol. Once started, Mr. Elledge was in an altered state in which it is doubtful he could have stopped choking the victim even were a gun at his head. His subsequent dazed state, lasting several hours, for which memory was impaired, suggests the possibility of his having experienced a seizure at some time during the choking episode. His impaired memory for the hours following the act must be believed because he reports whatever he recalls of the murder itself and thus would have no conscious or unconscious motive for concealing its aftermath. This memory lapse is not hysterical since it is for a period following the murder, whereas an hysterical amnesia would almost certainly involve the murder itself and an unconscious wish to forget it.

Diagnostic Impression

Mr. Elledge's pathology does not fall into a neat categorization but is, rather, the reflection of several serious disorders. First, Mr. Elledge is periodically psychotically paranoid, at which times he misperceives his environment and lashes out. Second, the extraordinary intensity of his periodic rages and his episodic lapses of memory for behaviors (not necessarily violent), coupled with his history of severe central nervous system trauma, suggest an organic impairment underlying his behaviors.

Furthermore, the fact that many of his violent episodes are triggered by alcohol suggests a pathological reaction to that substance, in which Mr. Elledge's paranoia is exacerbated and his rage reactions cannot be controlled. This phenomenon, called "episodic dyscontrol," has been well documented to exist, and is often associated with abnormal electrical activity in the

limbic system of the brain.

Given this combination of disorders there is no doubt in my mind that Mr. Elledge's ability to control his behavior at the time of the murder was seriously impaired.

Recommendation

I would suggest that an alcohol stimulated electroencephalogram be conducted to attempt to document this person's abnormal response to alcohol. It should be stressed, however, that the kind of abnormal brain activity described occurs deep in the brain and may not always be reflected in a surface E.E.G. You might also consider a sleep E.E.G. with nasopharyngeal leads which is more likely than an ordinary E.E.G. to document abnormal limbic system activity. His positive response to treatment with Dilantin while in prison suggests its future usefulness.

Dorothy Otnow Lewis

Dorothy Otnow Lewis, M.D.
Professor of Psychiatry

Roughly The cities I've Spent More Than a week in

1. Born June 27, 1950 Witchita Kansas
2. Joplin Missouri
3. Greenwood Missouri
4. Parsons Kansas
5. Witchita Kansas Where Bro. Danny was born...
6. Joplin Missouri
7. Langley Oklahoma
8. Denver Colorado
9. San Joaquin Valley Cailf
10. Los Angeles Calif
11. Torrance Calif
12. Wilmington Calif
13. Long Beach Calif
14. Denver Colorado
15. Boulder Colorado
16. Los Angeles Calif
17. Hollywood Calif
18. San Francisco Calif
19. Seattle Washington
20. Jacksonville Fla.
21. Chicago Ill.
22. Montreal Canada
23. Grossinger New York
24. Brooklyn New York
25. Boston Mass
26. Trinidad Colorado
27. Denver Colorado
28. Trinidad Colorado
29. St. Louis Missouri
30. Venna Missouri
31. San Diego Calif.
32. Turlock Calif
33. Tulsa & Langley Oklahoma
34. Walsenburg Colorado
35. Pueblo Colorado
36. Denver Colo.
37. Gardner Colo
38. St. Louis Missouri
39. Port Heuron Mich
40. Lansing Mich
41 Lambeauville Mich
42 Toledo Ohio
43 Bowling Green Ohio
44 Toledo Ohio
45 Hollywood Fla
46 Jacksonville Beach Fla

Roughly Youth and Early to Mid Teens

Late Teens and Early 20's

Met Davis

'74

From '74 Married Till I was Busted Got Split up

That's When I got Busted

I've been through every state except Alaska & Hawaii...

Plus Short trips to Mexico often.....

No. 83-5463

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1983

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WILLIAM DUANE ELLEDGE,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

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AFFIDAVIT

I, WILLIAM DUANE ELLEDGE, being first duly sworn according to law, depose and say, in support of my motion for leave to proceed without being required to prepay costs or fees;

1. I am the petitioner in the above-entitled case.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said case.

5. The nature of said cause is briefly stated as follows:

I was convicted and sentenced to death by the Circuit Court of Broward County, Florida. I filed a motion for post-conviction relief in the trial court and that motion was denied. The Supreme Court of Florida upheld the trial court's ruling. I am now petitioning for a writ of certiorari to the Supreme Court of the United States.

William D. Elledge

WILLIAM DUANE ELLEDGE

Duly witnessed and sworn to before me
this 22 day of September, 1983.

Ricky K Mayo

NOTARY PUBLIC

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEPTEMBER 15, 1984